

1957

January 31

Mr. Adelard E. Cote, Labor Commissioner
Department of Labor
15 Pleasant Street
Concord, New Hampshire

Dear Sir:

Your letter of January 7, 1957, requests the opinion of this office on two questions.

(1) Are student actors who work for no financial remuneration in summer theatre companies considered employees within the minimum wage provisions of RSA 279, as amended?

(2) Are minors who serve as ushers for no actual cash remuneration in summer theatres subject to the provisions of RSA 275 and RSA 279, as amended?

RSA 279 does not define employment or employee. Larson's Workmen's Compensation Law, Volume 1, chapter 8, under "Employment Status" says, that an employee "includes in the service of another, under any contract of hire, express or implied". Ballentine Law Dictionary, 2nd Edition, says in part, that employee means, "that there has been an agreement on the part of one person to perform a certain service in return for a compensation to be paid by the employer".

Question (1) of your letter indicates that there is no payment made to the student actors for their services, but rather in some instances the student actors pay for the privilege of appearing in a performance. Under these circumstances the student actor is exempt from the provisions of the minimum wage law since no wages or substitute for wages are paid by the employer.

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Question (2) of your letter is answered in the affirmative. The ushers received compensation in the form of a pass to the performance. The value of this compensation is tangible and readily ascertainable. The other requisites of an employment status are also present. It also follows that if the usher is a female employee, or a minor, then such employee is likewise subject to the protective legislation contained in RSA 275.

Sincerely yours,

William J. Doschman
Assistant Attorney General

WJD/T